

1 CENTER FOR DISABILITY ACCESS
2 Ray Ballister, Jr., Esq., SBN 111282
3 Mark Potter, Esq., SBN 166317
4 Phyl Grace, Esq., SBN 171771
5 Dennis Price, SBN 279082
6 Mail: PO Box 262490
7 San Diego, CA 92196-2490
8 Delivery: 9845 Erma Road, Suite 300
9 San Diego, CA 92131
10 (858) 375-7385; (888) 422-5191 fax
11 phylg@potterhandy.com

12 Attorneys for Plaintiffs
13
14
15
16
17
18
19
20
21
22

10 UNITED STATES DISTRICT COURT
11 CENTRAL DISTRICT OF CALIFORNIA

12 **Samuel Zarian,**

13 Plaintiff,

14 v.

15 **Samir Rustam**, in his individual
16 and representative capacity as
17 trustee of the Newman Trust Dated
18 April 8, 2010;

19 **Cecilia Rustam**, in her individual
20 and representative capacity as
trustee of the Newman Trust Dated
April 8, 2010;

Rasikbhai Nagardas Patel; and
Does 1-10,

Defendants.

Case No.

**Complaint For Damages And
Injunctive Relief For Violations
Of: American's With Disabilities
Act; Unruh Civil Rights Act**

23 Plaintiff Samuel Zarian complains of Defendants Samir Rustam, in his
24 individual and representative capacity as trustee of the Newman Trust Dated
25 April 8, 2010; Cecilia Rustam, in her individual and representative capacity
26 as trustee of the Newman Trust Dated April 8, 2010; Rasikbhai Nagardas
27 Patel; and Does 1-10 (“Defendants”) and alleges as follows:
28

PARTIES:

1. Plaintiff is a California resident with physical disabilities. He suffers from muscular dystrophy, cannot walk and uses a wheelchair for mobility.

2. Defendants Samir Rustam and Cecilia Rustam, in their individual and representative capacities as trustee, owned the real property located at or about 21500 Sherman Way, Canoga Park, California, in January 2016.

3. Defendants Samir Rustam and Cecilia Rustam, in their individual and representative capacities as trustee, own the real property located at or about 21500 Sherman Way, Canoga Park, California, currently.

4. Defendant Rasikbhai Nagardas Patel owned the West End liquor store (“Store”) located at or about 21500 Sherman Way, Canoga Park, California, in January 2016.

5. Defendant Rasikbhai Nagardas Patel owns the West End liquor store (“Store”) located at or about 21500 Sherman Way, Canoga Park, California, currently.

6. Plaintiff does not know the true names of Defendants, their business capacities, their ownership connection to the property and business, or their relative responsibilities in causing the access violations herein complained of, and alleges a joint venture and common enterprise by all such Defendants. Plaintiff is informed and believes that each of the Defendants herein, including Does 1 through 10, inclusive, is responsible in some capacity for the events herein alleged, or is a necessary party for obtaining appropriate relief. Plaintiff will seek leave to amend when the true names, capacities, connections, and responsibilities of the Defendants and Does 1 through 10, inclusive, are ascertained.

JURISDICTION & VENUE:

7. This Court has subject matter jurisdiction over this action pursuant to

1 28 U.S.C. § 1331 and § 1343(a)(3) & (a)(4) for violations of the Americans
2 with Disabilities Act of 1990, 42 U.S.C. § 12101, et seq.

3 8. Pursuant to supplemental jurisdiction, an attendant and related cause
4 of action, arising from the same nucleus of operative facts and arising out of
5 the same transactions, is also brought under California's Unruh Civil Rights
6 Act, which act expressly incorporates the Americans with Disabilities Act.

7 9. Venue is proper in this court pursuant to 28 U.S.C. § 1331(b) and is
8 founded on the fact that the real property which is the subject of this action is
9 located in this district and that Plaintiff's cause of action arose in this district.

10 **FACTUAL ALLEGATIONS:**

11 10. The Plaintiff went to the Store in January 2016 to shop.

12 11. The Store is a facility open to the public, a place of public
13 accommodation, and a business establishment.

14 12. Parking spaces are one of the facilities, privileges and advantages
15 offered by defendants to customers who visit the Store.

16 13. Unfortunately, there was not a single compliant, accessible parking
17 space in the parking lot for use by persons with disabilities that complied with
18 the Americans with Disability Act Accessibility Guidelines (ADAAG) in
19 January 2016.

20 14. There is currently no compliant, accessible parking space that complies
21 with the ADAAG today.

22 15. Plaintiff alleges, on information and belief, that defendants used to
23 have parking spaces reserved for persons with disabilities prior to January
24 2016.

25 16. Unfortunately, the defendants had no policy or procedure in place to
26 maintain its parking spaces so that they remained compliant and useable for
27 persons with disabilities prior to January 2016.

1 17. The defendants have no policy or procedure in place to maintain its
2 parking spaces so that they remain compliant and useable for persons with
3 disabilities currently.

4 18. The plaintiff personally encountered this problem.

5 19. This inaccessible parking lot denied the plaintiff full and equal access
6 and caused him difficulty and frustration.

7 20. Plaintiff would like to return and patronize the Store but will be
8 deterred from visiting until the defendants cure the violation.

9 21. Plaintiff lives less than three miles from this Store.

10 22. The Store is conveniently located.

11 23. The defendants have failed to maintain in working and useable
12 conditions those features required to provide ready access to persons with
13 disabilities.

14 24. The violations identified above are easily removed without much
15 difficulty or expense. They are the types of barriers identified by the
16 Department of Justice as presumably readily achievable to remove and, in
17 fact, these barriers are readily achievable to remove. Moreover, there are
18 numerous alternative accommodations that could be made to provide a
19 greater level of access if complete removal were not achievable.

20 25. Given the obvious and blatant violation, the plaintiff alleges, on
21 information and belief, that there are other violations and barriers on the site
22 that relate to his disability. Plaintiff will amend the complaint, to provide
23 proper notice regarding the scope of this lawsuit, once he conducts a site
24 inspection. However, please be on notice that the plaintiff seeks to have all
25 barriers related to his disability remedied. See *Doran v. 7-11*, 524 F.3d 1034
26 (9th Cir. 2008) (holding that once a plaintiff encounters one barrier at a site,
27 he can sue to have all barriers that relate to his disability removed regardless
28 of whether he personally encountered them).

1 26. Plaintiff is and has been deterred from returning and patronizing the
2 Store because of his knowledge of the illegal barriers that exist. Plaintiff will,
3 nonetheless, return to the Store to assess ongoing compliance with the ADA
4 and will return to patronize the Store as a customer once the barriers are
5 removed.

6 27. Additionally, on information and belief, the plaintiff alleges that the
7 failure to remove these barriers was intentional because: (1) these particular
8 barriers are intuitive and obvious; (2) the defendants exercised control and
9 dominion over the conditions at this location and, therefore, the lack of
10 accessible facilities was not an “accident” because had the defendants
11 intended any other configuration, they had the means and ability to make the
12 change.

13

14 **I. FIRST CAUSE OF ACTION: VIOLATION OF THE AMERICANS
15 WITH DISABILITIES ACT OF 1990** (On behalf of plaintiffs and against all
16 defendants (42 U.S.C. section 12101, et seq.)

17 28. Plaintiff repleads and incorporates by reference, as if fully set forth
18 again herein, the allegations contained in all prior paragraphs of this
19 complaint.

20 29. Under the ADA, it is an act of discrimination to fail to ensure that the
21 privileges, advantages, accommodations, facilities, goods and services of any
22 place of public accommodation is offered on a full and equal basis by anyone
23 who owns, leases, or operates a place of public accommodation. See 42
24 U.S.C. § 12182(a). Discrimination is defined, *inter alia*, as follows:

25 a. A failure to make reasonable modifications in policies, practices,
26 or procedures, when such modifications are necessary to afford
27 goods, services, facilities, privileges, advantages, or
28 accommodations to individuals with disabilities, unless the

1 accommodation would work a fundamental alteration of those
2 services and facilities. 42 U.S.C. § 12182(b)(2)(A)(ii).
3 b. A failure to remove architectural barriers where such removal is
4 readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv). Barriers are
5 defined by reference to the ADAAG, found at 28 C.F.R., Part 36,
6 Appendix “D.”
7 c. A failure to make alterations in such a manner that, to the
8 maximum extent feasible, the altered portions of the facility are
9 readily accessible to and usable by individuals with disabilities,
10 including individuals who use wheelchairs or to ensure that, to
11 the maximum extent feasible, the path of travel to the altered
12 area and the bathrooms, telephones, and drinking fountains
13 serving the altered area, are readily accessible to and usable by
14 individuals with disabilities. 42 U.S.C. § 12183(a)(2).

15 30. Pursuant to 28 C.F.R., Part 36, Appendix D (herein after “1991
16 Standards”), section 4.1.2, and 36 C.F.R., Part 1191, Appendix B (herein
17 after “2010 Standards”), section 208.2, if a business provides between 1 and
18 25 parking spaces, they must provide at least one handicap parking space that
19 is van accessible (having an eight foot access aisle).

20 31. Here, the defendants did not provide a single compliant, useable
21 accessible parking space in its parking lot.

22 32. A public accommodation must maintain in operable working condition
23 those features of its facilities and equipment that are required to be readily
24 accessible to and usable by persons with disabilities. 28 C.F.R. § 36.211(a).

25 33. Here, the failure to ensure that the accessible facilities were available
26 and ready to be used by the plaintiff is a violation of the law.

27 34. Given its location and options, plaintiff will continue to desire to
28 patronize the Store but he has been and will continue to be discriminated

1 against due to the lack of accessible facilities and, therefore, seeks injunctive
2 relief to remove the barriers.
3

4 **II. SECOND CAUSE OF ACTION: VIOLATION OF THE UNRUH CIVIL
5 RIGHTS ACT (On behalf of plaintiffs and against all defendants) (Cal Civ §
6 51-53)**

7 35. Plaintiff repleads and incorporates by reference, as if fully set forth
8 again herein, the allegations contained in all prior paragraphs of this
9 complaint.

10 36. Because the defendants violated the plaintiffs' rights under the ADA,
11 they also violated the Unruh Civil Rights Act and are liable for damages. (Civ.
12 Code § 51(f), 52(a).)

13 37. Because the violation of the Unruh Civil Rights Act resulted in
14 difficulty, discomfort or embarrassment for the plaintiffs, the defendants are
15 also each responsible for statutory damages, i.e., a civil penalty. (Civ. Code §
16 55.56(a)-(c).)

17
18 **PRAYER:**

19 Wherefore, Plaintiff prays that this court award damages and provide
20 relief as follows:

21 1. For injunctive relief, compelling defendants to comply with the
22 Americans with Disabilities Act and the Unruh Civil Rights Act. Note: the
23 Plaintiff is not invoking section 55 of the California Civil Code and is not
24 seeking injunctive relief under the Disabled Persons Act at all.

25 2. Damages under the Unruh Civil Rights Act which damages provide for
26 actual damages and a statutory minimum of \$4,000.

1 3. Reasonable attorney fees, litigation expenses and costs of suit,
2 pursuant to 42 U.S.C. § 12205; Cal. Civ. Code § 52.

3 Dated: February 17, 2016 CENTER FOR DISABILITY ACCESS

4
5 
6 By: _____
7 Mark Potter, Esq.
8 Attorneys for Plaintiff

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28